

**Letter of Findings: 42-20200116
International Fuel Tax Agreement (IFTA) Taxes
For the Year 2017**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Indiana Motor Carrier was unable to establish that the Department's assessment of additional International Fuel Tax, based on the best information available, was incorrect; Motor Carrier was unable to provide verifiable mileage records, and the Department was unable to conduct a true mileage audit.

I. International Fuel Tax Agreement - Assessment.

Authority: IC § 6-6-4.1-4(a); IC § 6-6-4.1-14(a); IC § 6-6-4.1-20; IC § 6-6-4.1-24(b); IC § 6-8.1-3-14; IC § 6-8.1-5-4(a); IFTA Articles of Agreement, § R1210.100 (2017); IFTA Articles of Agreement, § R1210.300 (2017); IFTA Procedures Manual, § P510 (2017); IFTA Procedures Manual, § P530.100 (2017); IFTA Procedures Manual, § P540 (2017); IFTA Procedures Manual, § P550.100 (2017); International Fuel Tax Agreement, <https://www.fin.gov.on.ca/en/tax/ifta/>.

Taxpayer protests the assessment of additional IFTA fuel tax.

STATEMENT OF FACTS

Taxpayer is an Indiana motor carrier which - according to publicly available information - provides for the removal and disposal of hazardous and non-hazardous waste materials such as industrial solvents and contaminated soil. Taxpayer provides its services to customers in Indiana, Ohio, Michigan, Kentucky, and Illinois.

Taxpayer operates 15 vehicles which travel both interstate and intrastate highways in providing its disposal services. Taxpayer chose Indiana as its base jurisdiction for purposes of the International Fuel Tax Association ("IFTA") and the International Registration Plan ("IRP"). The Indiana Department of Revenue ("Department") conducted an IFTA and IRP audit, which resulted in the assessment of additional 2017 IFTA taxes and IRP fees.

Taxpayer disagreed with the IFTA assessment and submitted a protest to that effect. In its protest submission, Taxpayer asked for a "Final Determination without a hearing." After considering both Taxpayer's protest and the information contained within the audit file, this Letter of Findings addressing the assessment of additional IFTA fuel tax results.

The IRP assessment is addressed at Letter of Findings 42-20200115 (March 20, 2020).

I. International Fuel Tax Agreement - Assessment.

DISCUSSION

The Department conducted a fuel tax audit and determined that Taxpayer owed additional 2017 IFTA fuel taxes. The Department found that although Taxpayer employed a third-party's mileage "tracking system" for its vehicles, the third-party could only provide reports for two years from the date of request. Moreover, the Department noted that Taxpayer failed to employ its own internal controls to assure that the distances captured by the third-party tracking system could be verified.

The Department found that Taxpayer's records "were not compliant and have been rated as inadequate." Due to the lack of documentation, the Department assessed tax based upon the best information available. Taxpayer protests the Department's assessment of motor carrier fuel taxes pursuant to IFTA.

IFTA is an agreement between various United States jurisdictions and Canada allowing for the equitable apportionment of previously collected motor carrier fuel taxes. International Fuel Tax Agreement, <https://www.fin.gov.on.ca/en/tax/ifta/> (last visited March 12, 2020). The agreement's stated goal is to simplify the taxing, licensing, and reporting requirements of interstate motor carriers such as Taxpayer. The agreement itself is not a statute but was implemented in Indiana pursuant to the authority specifically granted under IC § 6-6-4.1-14(a) and IC § 6-8.1-3-14.

Taxpayer operated trucks in Indiana. As such, it operated on Indiana highways and consumed motor fuel while on those highways. Therefore, the Taxpayer was subject to Indiana motor carrier fuel taxes under the IFTA. IC § 6-6-4.1-4(a).

Tax assessments of motor carrier fuel tax under IFTA are presumed to be valid. IC § 6-6-4.1-24(b). The taxpayer bears the burden of proving that any assessment is incorrect. *Id.* The taxpayer has a duty to maintain books and records and present them to the Department for review upon the Department's request. IC § 6-6-4.1-20; IC § 6-8.1-5-4(a).

IFTA Articles of Agreement, § R1210.300 (2017) provides the standard for determining whether a proposed assessment may successfully be challenged by the licensee. "The assessment made by a base jurisdiction pursuant to this procedure shall be presumed to be correct and, in any case where the validity of the assessment is questioned, the burden shall be on the licensee to establish by a fair preponderance of evidence that the assessment is erroneous or excessive." *Id.*

Taxpayer, as an IFTA licensee, is subject to the rules of IFTA. According to the IFTA Procedures Manual, § P530 (2017) in part, imposes upon licensees the responsible to maintain verifiable mileage and fuel purchase records:

The records maintained by a licensee under this article shall be adequate to **enable the base jurisdiction to verify the distances traveled and fuel purchased by the licensee** for the period under audit and to evaluate the accuracy of the licensee's distance and fuel accounting systems for its fleet. The adequacy of a licensee's records is to be ascertained by the records' sufficiency and appropriateness. Sufficiency is a measure of the quantity of records produced; that is, whether there are enough records to substantially document the operations of the licensee's fleet. The appropriateness of the records is a measure of their quality; that is, whether the records contain the kind of information an auditor needs to audit the licensee for the purposes stated in the preceding paragraph. Records that are sufficient and appropriate are to be deemed adequate.

(Emphasis added).

The IFTA Procedures Manual at § P550.100 (2017) imposes upon licensees the responsibility of maintaining and then providing verifiable fuel purchase and fuel consumption records.

The licensee shall maintain complete records of all motor fuel purchased, received, or used in the conduct of its business, and on request, produce these records for audit. The records shall be adequate for the auditor to verify the total amount of fuel placed into the licensee's qualified motor vehicles, by fuel type.

The Procedures Manual allows licensees to maintain these records in various ways. Taxpayer does not disagree the third-party's mileage tracking records were deficient. In such cases, in the absence of a functional, verifiable "tracking system," IFTA Procedures Manual, § P540.100 (2017), provides:

Distance records produced by a means other than a vehicle-tracking system that substantially document the fleet's operations and contain the following elements shall be accepted by the base jurisdiction as adequate under this article:

- .005 the beginning and ending dates of the trip to which the records pertain
- .010 the origin and destination of the trip
- .015 the route of travel
- .020 the beginning and ending reading from the odometer, hubodometer, engine control module (ECM), or any similar device for the trip
- .025 the total distance of the trip
- .030 the distance traveled in each jurisdiction during the trip
- .035 the vehicle identification number or vehicle unit number

In the absence or failure to provide mileage and fuel records, IFTA Procedures Manual, § P530.100 (2017) states that: "Failure to maintain records upon which the licensee's true liability may be determined or to make records available upon proper request may result in an assessment as stated in IFTA Articles of Agreement Section R1200."

Part of the requirements of being an IFTA licensee is maintaining records such as fuel receipts per § P550 and detailed distance records with supporting documentation per § P540 of the IFTA Procedures Manual (2017). According to the IFTA Procedures Manual, § P510 (2017) provides in part that:

A licensee shall retain the records of its operations to which IFTA reporting requirements apply for a period of four years following the date the IFTA tax return for such operations was due or was filed, whichever is later, plus any period covered by waivers or jeopardy assessments. A licensee must preserve all fuel and distance records for the period covered by the quarterly tax returns for any periods under audit in accordance with the laws of the base jurisdiction.

§ P530.100 (2017) goes on to provide that: "Failure to maintain records upon which the licensee's true liability may be determined or to make records available upon proper request may result in an assessment as stated in IFTA Articles of Agreement Section R1200."

IFTA Articles of Agreement, § R1210 (2017) in relevant part, states that:

.100 In the event that any licensee
.005 fails, neglects, or refuses to file a tax return when due;
.010 fails to make records available upon written request by the base jurisdiction; or
.015 fails to maintain records from which the licensee's true liability may be determined, the base jurisdiction shall proceed in accordance with .200 and .300.
.200 On the basis of the best information available to it, the base jurisdiction shall:
.005 determine the tax liability of the licensee for each jurisdiction and/or
.010 revoke or suspend the license of any licensee who fails, neglects or refuses to file a tax report with full payment of tax when due, in accordance with the base jurisdiction's laws.
Both .200.005 and .200.010 may be utilized by the base jurisdiction. For purposes of assessment pursuant to .100.010 or .100.015, the base jurisdiction must issue a written request for records giving the licensee thirty (30) days to provide the records or to issue a notice of insufficient records.

(Emphasis added).

The Department assessed additional IFTA fuel taxes pursuant to the terms of - - and as required - by the IFTA Articles of Agreement and the IFTA Procedures Manual. Taxpayer lays its failure to maintain and provide the records requested during the audit at the feet of its former third-party service provider. Taxpayer explains that its third-party service provider had assured Taxpayer that it was "compliant with all regulations related to [Department of Transportation] and IFTA reporting." According to Taxpayer, it "was only through this audit that we learned otherwise." Taxpayer further explains that it recently changed its third-party vendor and that it has now verified that the replacement vendor's computer program "does in fact meet the reporting requirements."

It is Taxpayer's responsibility to maintain specific, detailed, and accurate information concerning its fuel purchases and jurisdiction miles. In the absence of complete and verifiable source documentation, the Department's best information available audit assessment is reasonable and supported by law and the IFTA Audit Manual procedures. Taxpayer has not "establish[ed] by a fair preponderance of the evidence that the assessment is erroneous or excessive." IFTA Articles of Agreement, § R1210.300 (2013).

FINDING

Taxpayer's protest is respectfully denied.

March 20, 2020

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